ATTACHMENT A

Comments of SouthernLINC Wireless on the Sprint/Nextel Merger, WT Docket No. 05-63

(filed March 30, 2005)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Applications of Nextel Communications, Inc., Transferor, and Sprint Corporation, Transferee	)	WT Docket No. 05-63
	)	
For Consent to Transfer Control of Licenses and Authorizations	)	
	)	

To: The Commission

COMMENTS OF
SOUTHERNLINC WIRELESS

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Dated: March 30, 2005

EXECUTIVE SUMMARY

Although SouthernLINC Wireless does not oppose the proposed merger transaction between Sprint and Nextel, SouthernLINC Wireless urges the Commission to give close and careful consideration to the potential impact of the proposed merger on roaming. As the Commission recognized in the *Cingular/AT&T Order*, the availability of roaming is an essential component of the CMRS market, and any assessment of whether a proposed merger or consolidation of CMRS carriers is in the public interest must necessarily consider the transaction's impact on the availability of roaming services for consumers of mobile telephony services.

This merger involves a distinct customer segment served by very few providers: namely, customers for interconnected voice and "push-to-talk" ("PTT") digital dispatch services based on the iDEN air interface platform. As the Commission noted in the *Cingular/AT&T Order*, there are numerous nationwide, local, and regional GSM and CDMA carriers. However, there are only three commercial iDEN carriers throughout the entire country: (1) Nextel, the only nationwide iDEN carrier; (2) Nextel's partially-owned affiliate Nextel Partners; and (3) SouthernLINC Wireless, a regional carrier that is the only iDEN carrier in the country not affiliated with Nextel.

As discussed in these Comments, SouthernLINC Wireless has had great difficulty over the years in negotiating a roaming agreement with Nextel or with Nextel Partners. To this day, SouthernLINC Wireless still has no roaming agreement with Nextel Partners and has only a limited, non-reciprocal arrangement with Nextel itself, for which SouthernLINC Wireless must pay high rates and which restricts the type of roaming services available to SouthernLINC Wireless customers.

In order to ensure that the proposed merger is in the public interest, SouthernLINC Wireless therefore believes that the Commission should, at a minimum, seek any necessary assurances from the Applicants or adopt appropriate safeguards to protect wireless customers by ensuring that these practices will not continue and that the merged Sprint-Nextel entity will engage in good faith negotiations for roaming at reasonable rates and on reasonable, non-discriminatory terms and conditions.

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COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") hereby submits its comments on the above-captioned transfer applications.[1] Although SouthernLINC Wireless does not oppose the grant of these applications, SouthernLINC Wireless urges the Commission to give close and careful consideration to the impact of the proposed Sprint-Nextel merger on roaming, particularly with respect to the availability of roaming for smaller regional wireless carriers.

As an initial matter, SouthernLINC Wireless is concerned that, in the above-captioned applications, the Applicants barely mention their current roaming arrangements and are completely silent as to their intentions regarding their roaming partners following

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[1] / *See* Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63: Pleading Cycle Established, *Public Notice*, DA 05-502, released February 28, 2005.

consummation of the merger.[2] By contrast, the issue of roaming was extensively and explicitly addressed in the merger applications of Cingular and AT&T Wireless and of ALLTEL and Western Wireless,[3] and was an essential component of the Commission's ultimate approval of the Cingular/AT&T Wireless merger.[4]

As the Commission recognized in the *Cingular/AT&T Order*, the availability of roaming is an essential component of the CMRS market, and any assessment of whether a proposed merger or consolidation of CMRS carriers is in the public interest must necessarily consider the transaction's impact on the availability of roaming services for consumers of mobile telephony services. [5]

As set forth below, SouthernLINC Wireless' concern is heightened by the great difficulty it has had in negotiating a roaming arrangement with Nextel and its partially-owned affiliate Nextel Partners. To this day, SouthernLINC Wireless, their only iDEN-based competitor in the United States, has no roaming agreement with Nextel Partners and only a limited, non-reciprocal arrangement with Nextel itself, for which SouthernLINC Wireless must pay rates that substantially exceed those typical in the industry.

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[2] / *See Applications of Nextel Communications, Inc. Transferor, and Sprint Corporation, Transferee, For Consent to Transfer Control of Licenses and Authorizations*, File No. 0002031766, February 8, 2005, WT Docket No. 05-63, Exhibit 1 ("*Sprint/Nextel Merger Application*") at 39 and Attachment B at 12 – 13.

[3] / *See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004) ("*Cingular/AT&T Order*"); *See also Applications for the Transfer of Control of Licenses and Authorizations from Western Wireless Corporation to ALLTEL Corporation*, File No. 0002016468, January 24, 2005, WT Docket No. 05-50 ("*ALLTEL Merger Application*"), Exhibit 1: Description of Transaction and Public Interest Statement.

[4] / *Cingular/AT&T Order*, ¶¶ 166 – 182.

[5] / *Id.*

These practices harm consumers of wireless services by restricting the availability of roaming services and by keeping roaming rates artificially high. SouthernLINC Wireless therefore requests that the Commission take appropriate steps to ensure that the roaming practices described herein will not continue following the consummation of the proposed merger.

I. ROAMING IS AN ESSENTIAL COMPONENT OF THE COMMISSION'S REVIEW OF THE PROPOSED SPRINT/NEXTEL MERGER

Although this is not the first time that the Commission has been asked to review the issue of roaming within the context of a merger between two nationwide commercial mobile radio service (CMRS) providers,[6] each proposed merger transaction involves unique facts and circumstances (as well as unique potential consequences) that require a case-by-case analysis of issues – such as roaming – that could affect consumers of wireless services.

In the case of Cingular and AT&T Wireless, the Commission found that consumers would likely not be harmed based on a variety of reasons, including: (i) "the continued presence of two nationwide and numerous regional carriers using GSM technology after the merger"; (ii) Cingular's statements, supported by publicly available evidence, that "it has been and, after the merger, will continue to be a net payor of roaming fees"; (iii) a lack of evidence or specific allegations that Cingular had taken steps in the past to charge unreasonable roaming rates; (iv) Cingular's practice of entering into roaming agreements with reciprocal roaming rates (along with the

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6 / *See, e.g., Cingular/AT&T Order.*

expectation that this practice will continue); and (v) comments filed in support of the merger by a number of Cingular's roaming partners.[7]

However, as discussed in more detail in the sections below, the proposed merger of Sprint and Nextel presents facts and circumstances regarding roaming that, at least with respect to Nextel,[8] are substantially different from those considered by the Commission in its review of the merger of Cingular and AT&T Wireless.

First, and most significant, is the fact that this merger involves a distinct customer segment served by very few providers: namely, customers for interconnected voice and "push-to-talk" ("PTT") digital dispatch services based on Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology. As the Commission noted in the *Cingular/AT&T Order*, there are numerous nationwide, local, and regional GSM and CDMA carriers. However, there are only three commercial iDEN carriers throughout the entire country: (1) Nextel, the only nationwide iDEN carrier; (2) Nextel's partially-owned affiliate Nextel Partners; and (3) SouthernLINC Wireless, a regional carrier that is the only iDEN carrier in the country not affiliated with Nextel.[9]

Due to its use of the iDEN platform, SouthernLINC Wireless' only potential domestic roaming partners are Nextel and Nextel Partners. However, unlike Cingular,

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7 / *See Id.* at ¶¶ 167 – 182.

8 / Because SouthernLINC Wireless is technologically unable to roam with Sprint due to incompatible air interfaces, these Comments do not address roaming issues vis-à-vis Sprint. Nevertheless, relevant Sprint-related roaming information may become available through other filings submitted in this proceeding. SouthernLINC Wireless therefore reserves the option to address such Sprint-related roaming issues in subsequent phases of this proceeding.

9 / There are one or two small wireless carriers in the Western United States that apparently operate on the "Harmony" platform, a proprietary Motorola platform that is based on iDEN technology. As far as SouthernLINC Wireless is aware, none of these carriers are able to roam with Nextel or Nextel Partners.

neither Nextel nor Nextel Partners have any history or practice of entering into reciprocal roaming agreements with any domestic carriers other than each other.[10] As described below, it has taken SouthernLINC Wireless years of effort to obtain even a rudimentary, non-reciprocal roaming agreement with Nextel, and Nextel Partners has refused to enter into any commercially reasonable roaming agreement with SouthernLINC Wireless whatsoever. Furthermore, neither Nextel nor Nextel Partners appear to have any intention to enter into a reciprocal roaming agreement with SouthernLINC Wireless in the first place, even though their own customers would benefit from the increased coverage that access to the SouthernLINC Wireless network would offer, thus demonstrating apparent market failure in the provision and availability of iDEN roaming services.

SouthernLINC Wireless is concerned that the current roaming problems described in these Comments could be even further exacerbated by Nextel's merger with Sprint. This merger would give Nextel access to even greater market power and a far broader customer base than it has right now, thus distancing Nextel even further from any possible incentive to revise its current roaming practices. Indeed, the Applicants explicitly state that one of the goals of the proposed merger is to reduce roaming costs, or, more specifically, Sprint's roaming costs.[11] In other words, this is a merger between a carrier with no incentive to roam and a carrier that sees this merger as a means of reducing its need for roaming. As a result, any roaming incentives that may currently exist for either company will likely be substantially reduced – if not entirely eliminated – as a result of this merger.

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[10] / *See Sprint/Nextel Merger Application* at 39.

[11] / *Id.*

This potential outcome is supported by the Applicants' silence as to their post-merger intentions regarding roaming agreements and roaming partners, in stark contrast to the strong and explicit commitments made by both Cingular and ALLTEL on roaming.

The current limited roaming agreement between SouthernLINC Wireless and Nextel will expire soon, and if Nextel's roaming practices should be carried over unchanged into the new merged company, SouthernLINC Wireless is concerned that it will be unable to obtain any future roaming agreement with the new, larger company, or that roaming will only be made available on a non-reciprocal basis and/or at unreasonably high rates that would have to be passed on to SouthernLINC Wireless subscribers.

The practices of Nextel and Nextel Partners already deprive their own customers of the ability to receive roaming service in areas of the Southeastern United States where they do not provide service, yet SouthernLINC Wireless does. Nextel and Nextel Partners further place severe constraints on the ability of SouthernLINC Wireless customers to roam by providing only basic interconnected voice roaming at rates that exceed industry standards, or – in the case of Nextel Partners – no roaming service at all. In contrast, the roaming services Nextel and Nextel Partners provide to each other's customers include dispatch and data roaming services in addition to interconnected voice. Furthermore, the many consumers of all three iDEN carriers who rely on or value the unique characteristics and capabilities of iDEN services, such as PTT digital dispatch, cannot replace these services by switching to a GSM or CDMA carrier.[12] These

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[12] / The Applicants in fact rely on the lack of substitutability between Nextel's iDEN services and Sprint's CDMA services as a factor supporting their proposed merger. *See Sprint/Nextel Merger Application* at 25, 78 – 79, Attachment B at ¶¶ 86 – 106, 126, 156,

consumers are therefore being harmed by the roaming practices of Nextel and Nextel Partners, and this harm will be exacerbated by the proposed merger unless the Commission ensures that their interests are appropriately safeguarded.

II. UNIQUE CHARACTERISTICS OF THE iDEN CUSTOMER BASE

As the Commission noted in the *Cingular/AT&T Order*, the market for mobile telephony services in the United States is differentiated, and wireless carriers "do not offer a completely homogeneous service."[13] This proposed merger, unlike the merger of GSM-based carriers Cingular and AT&T Wireless, involves a distinct customer base served by very few providers: customers of interconnected voice and PTT digital dispatch services based on the iDEN air interface platform.

The iDEN networks and services of Nextel and SouthernLINC Wireless were designed and built from the ground up to provide trunked digital dispatch service that would allow customers to communicate with other individuals or within a group at the push of a button (hence the term "push-to-talk" or "PTT"), thus giving the customer's telephone handset the ability to essentially function as a high-quality "walkie-talkie." This PTT feature is highly valued by businesses and organizations, including public safety and other government agencies, because it enables customers to quickly establish private conferences on a one-to-one or one-to-many basis using a single handset that can also be used for phone, paging, and wireless data services. Recently, other carriers using

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and Attachment C at ¶¶ 10 – 11. Although some CDMA carriers have begun introducing PTT services, there has thus far been a lack of market acceptance for them due to latency inherent in the CDMA-based PTT technology that results in delays in PTT call set-up and between conversation breaks. As discussed in Section IV of these Comments, *infra*, the Commission has previously acknowledged this difference between iDEN and other PTT services.

[13] / *Cingular/AT&T Order* at ¶ 116.

other air interfaces, such as CDMA, have begun introducing their own PTT services. However, for purposes of roaming, these technology platforms are not compatible with iDEN.

iDEN carriers are further differentiated by the fact that they alone among domestic CMRS carriers give their customers the option of using handsets that are designed to military specifications for ruggedness, durability, and the ability to operate in harsh and adverse conditions. This makes iDEN carriers the logical communications choice for public safety agencies as well as for businesses whose employees must often work in challenging environments, such as public utility storm recovery crews.

Overall, iDEN customers rely on or value the unique services, capabilities, and characteristics that can only be found on iDEN systems. These customers are highly unlikely to switch to a carrier using a different air interface, such as GSM or CDMA, since this would mean losing these very features and services. This is supported by information and analysis in the *Sprint/Nextel Merger Application*, wherein the Applicants repeatedly point out that the services currently provided by Sprint and Nextel are not close substitutes for each other.[14]

Those carriers currently providing commercial iDEN-based services in the United States are as follows:

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[14] / *Sprint/Nextel Merger Application* at 25, 78 – 79, Attachment B at ¶¶ 86 – 106, 126, and 156, and Attachment C at ¶¶ 10 – 11.

A. Nextel Communications, Inc.

Nextel Communications, Inc. ("Nextel") is currently the only nationwide carrier that utilizes the iDEN platform. According to the *Sprint/Nextel Merger Application*, Nextel currently provides services in 202 of the top 300 MSAs in the United States and, together with its affiliate, Nextel Partners, Inc., serves 297 of the top 300 MSAs.[15] Nextel's only two-way roaming arrangement in the United States is with its own affiliate Nextel Partners.[16]

B. Nextel Partners, Inc.

Nextel Partners, Inc. ("Nextel Partners") provides services under the Nextel brand name in mid-size, secondary, and rural U.S. markets and has the right to operate in 98 of the top 300 MSAs in the United States.[17] According to the *Sprint/Nextel Merger Application*, Nextel owns approximately 32% of the outstanding stock of Nextel Partners, and consummation of the proposed merger could trigger the exercise of a "put" option by Nextel Partners that would result in full ownership of Nextel Partners by the merged Sprint/Nextel entity.[18] The only domestic carrier with whom Nextel Partners has entered into a roaming agreement is Nextel.

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[15] / *Sprint/Nextel Merger Application* at 14.

[16] / *Id.* at 39.

[17] / *Id.* at 16.

[18] / *Id.* at 16-17. If the Sprint/Nextel merger is consummated, the shareholders of Nextel Partners would have the right to vote to require Sprint/Nextel to purchase the remaining Nextel Partners shares that Nextel does not already own. According to the *Sprint/Nextel Merger Application*, the right to exercise this option "may extend for a substantial time after the Sprint Nextel merger is consummated." *Id.*

C. SouthernLINC Wireless

SouthernLINC Wireless is the only iDEN-based CMRS carrier in the United States that is not affiliated with Nextel and which is not a party to the proposed merger.

SouthernLINC Wireless is a wholly owned subsidiary of Southern Company, which is a registered holding company under the Public Utility Holding Company Act of 1935. As a CMRS provider, SouthernLINC Wireless operates a digital 800 MHz ESMR system using iDEN technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

SouthernLINC Wireless provides these services to almost 300,000 subscribers in a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless service provider in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors.

SouthernLINC Wireless currently has a roaming arrangement with Nextel that allows its customers to receive basic interconnected voice roaming service on Nextel's network at rates that are much higher than is typical in the industry for roaming. However, Nextel will not provide SouthernLINC Wireless customers with access to PTT digital dispatch roaming service (one of the key features of iDEN services) or data service when roaming on its network, even though Nextel provides all of these roaming services to customers of Nextel Partners and to Nextel's international partners in Canada and Mexico. Furthermore, Nextel does not permit its own customers to roam on SouthernLINC Wireless' network, and it objects to Nextel Partners doing so.

As described in more detail below, SouthernLINC Wireless has been unable to reach an agreement on roaming with Nextel Partners.

III. SOUTHERNLINC WIRELESS' EFFORTS TO OBTAIN ROAMING WITH NEXTEL AND NEXTEL PARTNERS

SouthernLINC Wireless' efforts to obtain roaming agreements with Nextel stretch back nearly ten years to 1996 and have been filled with delays and frustration. These efforts have been well-documented with the Commission through numerous filings and *ex parte* presentations over the course of these years.[19] Rather than recite all of the details from these previous filings, SouthernLINC Wireless provides below a summary of these efforts and incorporates its previous filings by reference.

From 1996 until early 2001, SouthernLINC Wireless was unable to obtain any roaming agreement with Nextel. During this time, Nextel refused to provide SouthernLINC Wireless with even *manual* roaming, despite its clear regulatory obligation under the Commission's Rules to do so. Nextel repeatedly claimed that technical issues made it impossible to provide roaming to SouthernLINC Wireless, even though both carriers operated in the same frequency ranges using the same Motorola iDEN technology and handsets. Nextel held to this position until at least 2001 despite the fact that, not only was manual roaming feasible, but automatic roaming could be implemented with only minor technical changes.

However, Nextel apparently did not have any technical problems in implementing an automatic roaming agreement in 1997 with Clearnet Communications (now Telus), an

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[19] / *See, e.g.*, Comments, Reply Comments, and *ex parte* filings made by SouthernLINC in the Commission's proceedings on *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, and *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193.

unrelated Canadian iDEN carrier that also uses the same Motorola equipment and technology as both Nextel and SouthernLINC Wireless, as well as subsequent agreements with a number of other international iDEN carriers. Similarly, Nextel and Nextel Partners have had an automatic roaming agreement with each other since 1999, shortly after Nextel Partners was incorporated.

Finally, in August 2001, after extended negotiations, Nextel finally agreed to enter into a rudimentary automatic roaming agreement that would allow SouthernLINC Wireless customers to roam on Nextel's network. However, this agreement is not reciprocal, since Nextel did not agree to let its own customers roam on SouthernLINC Wireless' network. As a result, Nextel is the recipient of any and all roaming revenues between the two companies and is able to charge SouthernLINC Wireless roaming rates that are well above industry standards. In addition, the agreement limits SouthernLINC Wireless customers to basic interconnect voice roaming only, and denies them digital dispatch or data roaming.

Furthermore, Nextel delayed the actual launch of basic voice roaming for SouthernLINC Wireless customers until June 2003, nearly two years after execution of a roaming agreement between the parties. Coincidentally, this was within days of Nextel's launch of its own nationwide digital dispatch roaming service with Nextel Partners, meaning that customers of Nextel and Nextel Partners could now enjoy voice and digital dispatch roaming on each other's networks, while SouthernLINC Wireless customers were (and still are) limited to basic voice roaming.

SouthernLINC Wireless' efforts to obtain a roaming agreement with Nextel Partners have been even more strenuous. At the outset, Nextel Partners attended the roaming negotiations between Nextel and SouthernLINC Wireless, thus creating the distinct impression that they were negotiating together with SouthernLINC Wireless as a single party. However, once the above-mentioned agreement was reached, Nextel Partners stated that it would not honor the prices agreed to by Nextel during the negotiations. Later, Nextel Partners verbally consented to sign an agreement with SouthernLINC Wireless largely similar to the Nextel agreement, but would only do so if SouthernLINC Wireless agreed to certain unreasonable conditions, such as the exclusion of select markets from the agreement and the imposition of an exorbitant pricing structure.

Last year, Nextel Partners approached SouthernLINC Wireless about the possibility of entering into a reciprocal roaming arrangement. However, when SouthernLINC Wireless expressed interest in entering into negotiations over such an arrangement, Nextel Partners advised that it needed to check with Nextel first. Nextel apparently refused to give permission to Nextel Partners to enter into reciprocal roaming with SouthernLINC Wireless because Nextel Partners withdrew its proposal soon after checking with Nextel.

To this day, Nextel Partners has consistently responded to SouthernLINC Wireless' requests for roaming with unreasonable conditions, including roaming rates that are nearly double the already excessive rates that SouthernLINC Wireless pays to Nextel. SouthernLINC Wireless is therefore still without any type of roaming agreement with Nextel Partners whatsoever.

Based on these experiences, SouthernLINC Wireless is very concerned that, if the roaming practices of Nextel and Nextel Partners are carried over unchanged into the new, larger Sprint-Nextel company, SouthernLINC Wireless will be unable to obtain any future roaming agreements or will be told that roaming will only be made available on a non-reciprocal basis and/or at unreasonably high rates. These concerns are reinforced by the fact that, unlike the merger applications filed by Cingular and ALLTEL, the *Sprint/Nextel Merger Application* barely mentions the Applicants' current roaming arrangements and is completely silent as to their intentions regarding their roaming partners following consummation of the merger.

IV. MARKET FORCES ALONE ARE NOT SUFFICIENT IN THIS CASE TO ENSURE ROAMING IS AVAILABLE TO ALL WIRELESS CUSTOMERS

As the Commission recognized in the *Cingular/AT&T Order*, the availability of roaming is an essential component of the CMRS market, and any assessment of whether a proposed merger or consolidation of CMRS carriers is in the public interest must necessarily consider the transaction's impact on the availability of roaming services for consumers of mobile telephony services.[20]

Although carriers are required to provide manual roaming services (when technically feasible) under Section 20.12(c) of the Commission's Rules, 47 C.F.R. § 20.12(c), the Commission has thus far declined to impose any regulatory obligations on carriers regarding the rates, terms, or conditions for the provision of either manual or automatic roaming services because such issues have generally been addressed by competitive market forces.[21] However, market forces alone are not sufficient in this case to ensure that roaming is available to all wireless customers.

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20 / *Cingular/AT&T Order*, ¶¶ 166 – 182.

21 / *See, e.g., Id.* at ¶¶ 174 – 176.

The most obvious obstacle to roaming is technology. As the Commission has previously stated, "the number of potential roaming partners in a given geographic market is still limited by technological incompatibility and frequency bands."[22] In other words, a GSM carrier cannot roam on a CDMA carrier's network, and an iDEN carrier can only roam on the network of another iDEN carrier.

Another obstacle is the degree to which carriers have an incentive to enter into a roaming agreement with a requesting carrier. In the *Cingular/AT&T Order*, the Commission stated that nationwide carriers still have holes in their licensed service areas "and therefore have a strong incentive to enter into roaming agreements with other carriers in order to fill in coverage gaps [and] compete on the basis of coverage."[23] Nextel's service in the Southeastern United States includes substantial coverage gaps, particularly in rural areas, that could be easily filled by roaming with SouthernLINC Wireless. However, Nextel does not seem to consider this to be a priority. This indicates that the incentive to increase coverage may be significantly lower – or even absent altogether – for a carrier such as Nextel that primarily competes not on the basis of coverage, but on the basis of other differentiators, such as a unique service offering like PTT digital dispatch.[24]

The Commission has previously recognized that its PTT service is a key way in which Nextel has distinguished itself from its nationwide competitors. For example, the Commission stated that "since Nextel has differentiated its brand based in part on its

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22 / *Id.* at ¶ 175.

23 / *Id.* at ¶ 176.

24 / In the *Cingular/AT&T Order*, the Commission stated that "[t]he services provided by the mobile telephony carriers are differentiated on the following key bases: (1) quality, (2) coverage, and (3) plan features." *Id.* at ¶ 124.

signature PTT offering, and is also the only nationwide carrier to use iDEN, rather than CDMA or GSM/TDMA. . .the distinctive characteristics of Nextel's service offering or differences in equipment costs may prevent the other nationwide carriers from reaching an agreement with Nextel to restrict competition on price or other terms and conditions of service."[25] The Applicants themselves also state that "Nextel's business strategy has been to provide differentiated products and services in order to acquire and retain the most valuable customers in the wireless telecommunications industry."[26] Nextel's ability to differentiate itself competitively based on these characteristics, rather than on the extent of its coverage, demonstrates that Nextel may lack the "strong incentive to enter into roaming agreements" identified by the Commission in the *Cingular/AT&T Order*.

The Commission also stated in the *Cingular/AT&T Order* that "carriers offering a single-rate price plan have a strong incentive to negotiate to lower roaming rates they pay to other carriers" and that "competition and the need to generate revenues prevents nationwide carriers from refusing to enter into roaming agreements with smaller local and regional carriers or raising the roaming rates they charge other carriers above competitive levels."[27] While this may apply in the case of the numerous GSM and CDMA carriers, these factors are absent with respect to the U.S. iDEN market, where Nextel is the only nationwide carrier.

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[25] / *Id.* at ¶ 159. In a footnote to this passage, the Commission wrote: "Although, as noted previously, several other major carriers recently introduced rival PTT offerings, some analysts believe these competitors' products are somewhat less attractive than Nextel's PTT service due to their longer 'latency,' a term that refers to delays in setting up a PTT call and the pushes between conversation breaks." *Id.* at fn. 410 (citations omitted).

[26] / *Sprint/Nextel Merger Application* at 15.

[27] / *Cingular/AT&T Order* at ¶ 176.

Despite SouthernLINC Wireless' long-running efforts, Nextel has thus far declined to enter into any arrangement that would permit Nextel customers to roam on SouthernLINC Wireless' network, and agreed, but only after lengthy negotiations, to allow SouthernLINC Wireless customers to roam on its network, albeit with severe restrictions on the service they can receive. As a result, Nextel is currently the recipient of any and all roaming revenues between the two companies and thus has no incentive to negotiate lower, competitive roaming rates.

Nextel also lacks a competitive incentive to enter into a roaming agreement with SouthernLINC Wireless as an independent regional iDEN carrier since there are, quite simply, no other iDEN competitors to Nextel with whom SouthernLINC Wireless could roam. The only other iDEN carrier in the United States is Nextel Partners, which is partially-owned by Nextel and which operates under the Nextel brand name. As described previously in these Comments, Nextel and Nextel Partners often do not act as separate companies, nor do they appear to operate at arm's length, and each provides the other with favorable roaming rates, terms, and conditions that they refuse to make available to SouthernLINC Wireless.

Additionally, in the *Cingular/AT&T Order*, the Commission stated that "customers of various firms always have the option to switch to firms employing other air interfaces" – *e.g.*, they could switch from a GSM carrier to a CDMA carrier.[28] However, as discussed elsewhere in these Comments, many customers of the three iDEN carriers rely on or value the unique services, capabilities, and characteristics, such as PTT digital dispatch, that can be found only on iDEN systems. Such a customer is highly unlikely to

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[28] / *Id.* at ¶ 180.

switch to a carrier using a different air interface as a result of dissatisfaction with roaming if switching also means losing these iDEN-specific features and services. Again, the Applicants repeatedly point to the lack of close substitutability between iDEN and CDMA services and markets as one of the justifications for approving this merger.[29]

Conversely, both Nextel and Nextel Partners have a strong motivation to withhold roaming as a means of placing SouthernLINC Wireless – their only iDEN competitor – at a competitive disadvantage. For Nextel and Nextel Partners, this motive may far outweigh any benefit that they could provide their own subscribers by allowing them to receive roaming service in large areas of the Southeastern United States that are not covered by their own networks.

Overall, Nextel and Nextel Partners lack the competitive incentives to roam identified by the Commission in the *Cingular/AT&T Order* and have a strong motivation either to refuse to enter into a reciprocal roaming agreement with SouthernLINC Wireless or to insist that SouthernLINC Wireless accept rates, terms, and conditions for roaming that are not commercially reasonable. And, in fact, this is exactly what has happened. As a result, the current situation in the market for iDEN roaming services is not one of marketplace competition, but, if anything, of market failure.

V. CONCLUSION

SouthernLINC Wireless does not dispute that there may be potential public interest benefits to the proposed merger of Sprint and Nextel. However, as demonstrated above, Nextel and Nextel Partners have consistently and repeatedly engaged in unreasonable roaming practices to the detriment of wireless consumers, particularly those

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[29] / *Sprint/Nextel Merger Application* at 25, 78 – 79, Attachment B at ¶¶ 86 – 106, 126, and 156, and Attachment C at ¶¶ 10 – 11.

who rely on the unique services and capabilities that can only be found on iDEN networks. There is already market failure for iDEN roaming. The combined Sprint/Nextel entity will have even greater market power and leverage, as well as the incentive, to allow it to continue Nextel's unreasonable roaming practices. Therefore, the proposed merger also brings with it potential harms which must be addressed.

In order to ensure that the proposed merger is in the public interest, SouthernLINC Wireless believes that the Commission should, at a minimum, seek any necessary assurances from the Applicants or adopt appropriate safeguards to protect wireless customers by ensuring that these practices will not continue and that the merged Sprint-Nextel entity will engage in good faith negotiations for roaming at reasonable rates and on reasonable, non-discriminatory terms and conditions.

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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